

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE HORSEHEAD HOLDING CORP. SECURITIES LITIGATION

Civil. Action No. 16-292-LPS-CJB

Consolidated
CLASS ACTION

ORDER AND FINAL JUDGMENT

On June 4, 2021, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated January 5, 2021 (the “Stipulation”) are fair, reasonable, and adequate for the settlement of all claims asserted by the Settlement Class against James M. Hensler and Robert D. Scherich (collectively the “Defendants”); and (2) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members; and the Court having considered all matters submitted to it at the hearing and otherwise; and

It appearing that the Notice substantially in the form approved by the Court in the Court’s Order Preliminarily Approving Settlement and Providing For Notice (“Preliminary Approval Order”) [ECF No. 187] was provided all reasonably identifiable Settlement Class Members; and

It appearing that the Summary Notice substantially in the form approved by the Court in the Preliminary Approval Order was published in accordance with that Order and the specifications of the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Unless indicated otherwise, all capitalized terms used herein have the same meanings as set forth and defined in the Stipulation and in the Notice.
2. The Court has jurisdiction over the subject matter of the above-captioned action

(the “Action”), Class Plaintiffs, all Settlement Class Members, and the Defendants, including all Settlement Class Members who did not timely file a request for exclusion from the Class by deadline pursuant to the Court’s Preliminary Approval Order.

3. The Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Class Plaintiffs fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of this Litigation. The Settlement Class is being certified for settlement purposes only.

4. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies the claims in this Action against the Defendants. The Court certifies as the Settlement Class all persons or entities who purchased or otherwise acquired securities of Horsehead Holdings Corp. (“Horsehead”), from February 25, 2014 to February 2, 2016 inclusive, and were purportedly damaged thereby. Excluded from the Settlement Class are Defendants, their affiliates, any members of Defendants’ immediate families, any entity in which Defendant or a member of their immediate family has controlling interest, and the heirs, successors, and assigns of any excluded party. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Class Plaintiffs are

certified as the class representatives, and Lead Counsel previously selected by Lead Plaintiffs and appointed by the Court is hereby appointed as Lead Counsel for the Settlement Class (or “Class Counsel”).

6. The Court hereby finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions: met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and 15 U.S.C. § 78u-4(a)(7) (added to the Exchange Act by the Private Securities Litigation Reform Act of 1995); constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons entitled to such notice. No Settlement Class Member is relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court has taken notice of the single objection in this Action, by Thomas I. Boswell [ECF No. 199]. The objection has been considered by this Court and is **OVERRULED**. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged and that the statutory waiting period has elapsed. Thus, it is hereby determined that all members of the Settlement Class are bound by this Order and Final Judgment except those persons listed on Exhibit A to this Order and Final Judgment.

7. The Settlement is approved as fair, reasonable, and adequate and in the best interests of the Settlement Class. The Court further finds that there was no collusion, that the Settlement set forth in the Stipulation is the result of arm’s-length negotiations between

experienced, competent counsel representing the interests of the Plaintiffs, Class Members and the Defendants, and that the record is sufficiently developed and complete to have enabled the Class Plaintiffs and the Defendants to have adequately evaluated and considered their positions. Class Plaintiffs and Defendants are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation. Upon the satisfaction of these conditions precedent:

a. The Action and the Consolidated Amended Complaint will be dismissed with prejudice, and without costs, as to the Defendants;

b. Class Plaintiffs and the Settlement Class Members, on behalf of themselves, their current and former heirs, executors, administrators, successors, attorneys, legal representatives, and assigns, will be deemed to have released and forever discharged the Defendants' Released Parties from any and all Released Plaintiffs' Claims. Class Plaintiffs and the Settlement Class Members, and anyone acting or purporting to act for any of them will be permanently and forever enjoined from prosecuting, attempting to prosecute, or assisting others in the prosecution of the Released Plaintiffs' Claims against the Defendants' Released Parties, whether or not such Class Member executes and delivers a Proof of Claim form or shares in the Net Settlement Fund;

c. The Defendants and their Released Parties, including any and all of their respective successors in interest or assigns, will be deemed to have released and forever discharged any and all Defendants' Claims against the Class Plaintiffs, any of the Settlement Class Members and any of their counsel, including Class Counsel and any counsel working under Class Counsel's direction; and

d. The Defendants' Released Parties may file the Stipulation and/or the Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment

bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

8. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members.

9. Neither this Order and Final Judgment, the Stipulation, nor any of the negotiations, documents or proceedings connected with them shall be:

a. referred to or used against the Released Parties, or any of them, as evidence of wrongdoing by anyone;

b. construed against the Released Parties, or any of them, as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

c. construed as, or received in evidence as, an admission, concession or presumption against the Settlement Class or any of them, that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the Settlement; or

d. used or construed as an admission of any fault, liability or wrongdoing by any person or entity, or offered or received in evidence as an admission, concession, presumption, or inference against any of the Released Parties in any proceeding other than such proceedings as may be necessary to consummate or enforce the Stipulation.

10. The Court retains jurisdiction for matters relating to the Settlement.

11. Without further order of the Court, Class Plaintiffs and the Defendants may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

12. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules

of Civil Procedure.

13. Pursuant to Section 21D(c)(1) of the Private Securities Litigation Reform Act of 1995, this Court hereby finds that each Party and its respective counsel has complied with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to all pleadings and motions related to the Released Plaintiffs' Claims, and that insofar as it relates to the Released Plaintiffs' Claims, the Action was not brought for any improper purpose and is not unwarranted by existing law or legally frivolous.

14. The Court GRANTS Lead Counsel's request for attorneys' fees in the cash amount of \$ 4,916,667, as well as reimbursement of reasonable and necessary expenses incurred in the prosecution of the Action in the amount of \$ 283,413.35, together with the interest earned thereon for the same time period and at the rate earned by the Settlement Fund until paid. Said fees shall be allocated among Plaintiffs' Counsel in a manner which, in Lead Counsel's good-faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action. The Court finds that the amount of fees awarded is fair and reasonable in light of the time and labor required, the novelty and difficulty of the case, the skill required to prosecute the case, the experience and ability of the attorneys, awards in similar cases, the contingent nature of the representation and the result obtained for the Class.

15. The Court hereby GRANTS Class Plaintiffs' reimbursement of their reasonable costs and expenses directly related to their representation of the Settlement Class in the amount of \$ 10,000 each.

16. Any order approving or modifying the Plan of Allocation, Lead Counsel's application or award of attorneys' fees and expenses, or Class Plaintiffs' application or award for reimbursement of costs and expenses, shall not disturb or affect the finality of this Judgment, the

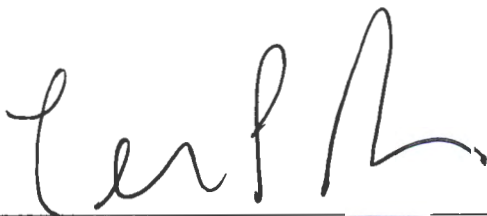
Stipulation, or the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement.

17. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees and expenses in the Action; and (d) all Parties hereto for the purpose of construing, enforcing and administering the Stipulation.

18. In the event that the Settlement does not become final and effective in accordance with the terms and conditions set forth in the Stipulation, then this Order and Final Judgment shall be rendered null and void and be vacated and the Settlement and all orders entered in connection therewith shall be rendered null and void, and the parties shall be deemed to have reverted to their respective status prior to the execution of this Stipulation, and they shall proceed in all respects as if the Stipulation had not been executed (except as set forth in the Stipulation itself) and the related orders had not been entered, preserving in that event all of their respective claims and defenses in the Action, and shall revert to their respective positions in the Action.

SO ORDERED:

Dated: June 4, 2021



U.S.D.J.